

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

MARGARET A. GEESTMAN,

Appellant,

v.

State of Washington, DEPARTMENT  
OF ECOLOGY,

Respondent.

PCHB No. 89-101

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

On August 7, 1989, Margaret A. Geestman filed an appeal  
contesting the State of Washington Department of Ecology's ("DOE")  
issuance of Order DE 89-C219.

A hearing on the merits was held September 18, 1989 in Wenatchee,  
Washington. Present were Chair Judith A. Bendor and Member Wick  
Dufford. Appellant Geestman represented herself pro se. DOE was  
represented by Assistant Attorney General Ceil Buddeke. Court  
Reporter Kathryn A. Beehler of Gene Barker & Associates recorded the  
proceedings.

1        Witnesses were sworn and testified. Exhibits were admitted and  
2 examined. Argument was made. From the foregoing, the Board makes  
3 these

4                                FINDINGS OF FACT

5    I

6        Margaret A. and Bernard W. Geestman own property along the Methow  
7 River about four miles downriver from the City of Twisp, in Okanogan  
8 County. They have a permit to appropriate water (G4-29253P) using a  
9 well near the River. The permit was issued on November 10, 1988 and  
10 is not the subject of this appeal. (It is the Department of Ecology's  
11 position that the well is in close hydraulic continuity with the  
12 River.) The water allowed to be withdrawn is:

- 13                a) One acre-foot per year for continuous stock water;  
14                b) Two acre-feet per year continuous single domestic use;  
15                c) 348 acre-feet per year to be used April 1 to October 31 for  
16 irrigation on 87 acres.

17        The Methow River periodically experiences low flows. Because of  
18 these, the Geestmans' water permit for 348 acre-feet is subject to  
19 interruption, and both the Report of Examination and the water permit  
20 explicitly so state, specifying the base flows that trigger that  
21 interruption.

22        The Geestmans have not yet irrigated their property from this  
23 well.  
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26        FINAL FINDINGS OF FACT,  
27        CONCLUSIONS OF LAW AND ORDER

II

On July 6, 1989 the Department issued an Order to the Geestmans (No. DE-C219) advising them that the Methow River minimum flow adopted by Chapter 173-548 of the Washington Administrative Code for that date at Pateros is 2,150 cfs (cubic feet per second), and that on July 1 the actual flow was 1,890 cfs, considerably below the minimum levels. The Geestmans were reminded that their water permit is subject to interruption when the flows are less than the minimum flows. The Order further states that:

Beginning July 6, you must call the River Flow Information Line any day you intend to divert water. The recorded message will advise you of the actual river flow, the minimum flow, whether or not your river reach is open or closed for water diversion, and when the message will be updated next. The recorded message will modify this order on a daily basis, if appropriate. The Toll-Free number is 800-843-6846.

This order will remain in effect throughout the 1989 irrigation season. You may divert or withdraw water under Ground Water permit No. G4-29253P only when advised by the River Flow Information Line that the actual river flows for your reach of the Methow River and downstream reaches are above the adopted minimum flows. It is your responsibility to call each day to determine that your reach of the river and downstream reaches are above the minimum flows. If you have any questions about the daily messages, contact the Department of Ecology at (509) 575-2800 for clarification.

A similar order was issued that summer to other appropriators along the Methow River whose water is subject to interruption.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

PCHB No. 89-101

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III

In 1986 the Department established the River Flow Information Line and began issuing such directory Orders warning that water withdrawal may be subject to interruption. This constituted a valiant effort by the Department to assist the farmers and promote voluntary compliance by providing advance information. Prior to this approach, when river flows fell below base levels, DOE personnel without advance warning would appear and have to shut off the withdrawal of water.

Order DE-C219 itself is merely a directive, reminding the Geestmans of the limits of their water permit and providing them with an easy means to determine if they can irrigate. By itself, it does not further limit their rights; it was merely a warning.

IV

In 1989, the Geestmans did not call the toll-free 24-hour number. Neither did they irrigate as they have not installed an irrigation system.

Had they called the Hot Line after July 6, 1989, they would have learned that the Methow River at Pateros went above base minimum levels, and people with interruptible water permits were allowed to irrigate. Moreover, upon hearing the Hot Line they would have learned that due to the rise in River levels, they would not have had to call the Line daily.

V

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board makes these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these parties and these matters. Chaps. 43.21B, 43.27A, 90.03 and 90.44 RCW.

II

RCW 43.27A.190 provides that whenever it appears to the Department of Ecology that a person is violating or is about to violate any water resources, a rule or regulation adopted by the department, the Department may issue a written regulatory order specifying the statute, rule or regulation about to be violated, and shall order necessary corrective action.

III

DOE properly exercised its discretion under RCW 43.27A.190 in issuing Order No. DE-C219 to the Geestmans. The Order did not command them to stop irrigation. It merely advised them that river flows were low and that prior to irrigating they had to call a toll-free information line. Such an Order is lawful and eminently reasonable.

IV

The Geestman's underlying concern appears to be whether their

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

PCHB No. 89-101

1 well water is really in direct hydraulic continuity with the nearby  
2 river flows. This is not properly an issue in this case. We note  
3 that before the Geestmans determine whether to further proceed with  
4 their well development, they could choose to retain an expert to look  
5 into this matter. If expert evaluation, including field measurements  
6 were to support the Geestmans' position, the information could be  
7 presented to Ecology, and the Geestmans might seek a new permit.

8 V

9 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
10 adopted as such.  
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1 From these Conclusions of Law the Board enters this

2 ORDER

3 The Department of Ecology Order No. DE-C219 is AFFIRMED.

4 DONE this 12<sup>th</sup> day of October, 1989.

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6 POLLUTION CONTROL HEARINGS BOARD

7 Judith A. Bendor  
8 JUDITH A. BENDOR, Presiding

9 Wick Dufford  
10 WICK DUFFORD, Member

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CONCLUSIONS OF LAW AND ORDER

PCHB No. 89-101

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